

A. G. Contract No. KR91-0404-TRD  
ECS File: JPA-91-07  
District File: FCD 91001  
Project: RBM-600-0-504/H079706C  
Section: Scatter Wash Channel  
43rd Ave.-35th Ave.

INTERGOVERNMENTAL AGREEMENT  
AMONG  
THE STATE OF ARIZONA,  
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
AND  
THE CITY OF PHOENIX

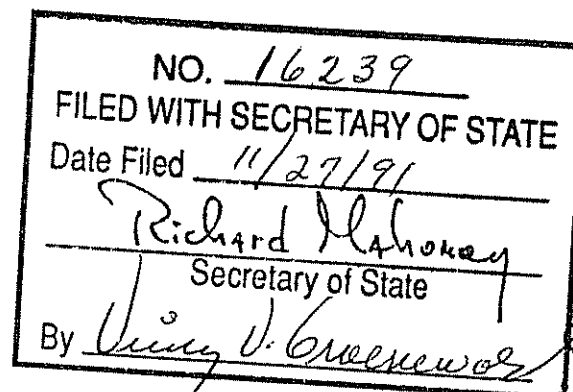
THIS AGREEMENT is entered into 27 November, 1991,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State"), the  
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal  
corporation and political subdivision of the State of Arizona,  
acting by and through its Board of Directors (the "DISTRICT")  
and the CITY OF PHOENIX, acting by and through its City Council  
(the "CITY").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The DISTRICT is empowered by Arizona Revised Statutes  
Section 48-3603 to enter into this agreement and has authorized  
the undersigned to execute this agreement on behalf of the  
DISTRICT.

3. The CITY is empowered by Arizona Revised Statutes  
Section 48-572 and City Charter, Chapter 2 Section 2 to enter  
into this agreement and has by resolution, a copy of which is  
attached hereto and made a part hereof, resolved to enter into  
this agreement and has authorized the undersigned to execute  
same on behalf of the CITY.



4. The STATE is proceeding with the planning, design and construction of the Agua Fria Freeway, which will traverse the existing Scatter Wash Channel, ("Scatter Wash"). Included in this project is the improvement of Scatter Wash immediately west of 35th Avenue to a point approximately 1450 feet southwest of the Agua Fria Freeway south frontage road.

5. The CITY is planning and designing the reconstruction of 43rd Avenue between Union Hills Drive and Beardsley Road (alignment for the Agua Fria Freeway). This project will include an all-weather crossing of Scatter Wash. An option to the CITY's project includes improving approximately 2800 linear feet of channel in Scatter Wash upstream of 43rd Avenue to a point of connection with the STATE's Agua Fria Freeway channel. If unimproved, as much as 2000-3000 cubic feet per second (cfs) of the 100-year flow, estimated to be 6100 cfs, will bypass the Scatter Wash crossing and flow south along 43rd Avenue, potentially flooding existing residential neighborhoods.

6. The DISTRICT is interested in coordinating the implementation of the two channel projects and, if the DISTRICT's design standards and criteria are used, assuming the future operations and maintenance responsibilities of the channels from 43rd Avenue to the Agua Fria Freeway south frontage road.

7. This agreement is to define the responsibilities for the design, construction, operation, maintenance and permitting of the Scatter Wash improvements between 43rd Avenue and the Agua Fria Freeway south frontage road (the "PROJECT"). The DISTRICT/CITY project shall refer to the flood control-related improvements constructed in Scatter Wash from 43rd Avenue to the STATE constructed project, as shown on Exhibit "A", attached hereto and made a part hereof.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

The STATE will:

1. In conjunction with the design and construction of the Agua Fria Freeway, design and construct the Scatter Wash improvements (improvements), to the project limits, outlined in Exhibit "A". The improvements will be designed and constructed in accordance with design and construction criteria provided by the DISTRICT.

a. Provide the DISTRICT with plans and specifications for the improvements prior to finalization, for its review and comment.

b. Provide the DISTRICT with any changes to final plans and specifications for the improvements prior to the issuance of a contract change order.

c. Bear all costs of the design and construction of said improvements to the project limits depicted in Exhibit "A".

2. At no cost, grant easements over STATE rights-of-way to the DISTRICT and the CITY, to construct the DISTRICT/CITY project that will connect to the STATE improvements and reserve the right to review and approve the design and construction of any features within STATE right-of-way.

3. Upon completion of the improvements within STATE rights-of-way, grant the DISTRICT a perpetual easement at no cost, for use of STATE rights-of-way south of the Agua Fria Freeway south frontage road for the DISTRICT's operation and maintenance and access purposes.

4. Maintain any drainage pipes or structures that outfall into the improved Scatter Wash from STATE rights-of-way.

5. Not increase the flows that discharge into the improved Scatter Wash beyond 720 cubic feet per second (cfs), without first obtaining the approval of the DISTRICT and the CITY. However, the STATE reserves the right to drain additional onsite roadway drainage, that would be generated by widening or improving the Agua Fria Freeway (27th Avenue to 39th Avenue), into the Scatter Wash.

6. Take all required actions within its authority to ensure that waters discharged into the PROJECT from lands owned or regulated by the STATE, comply with any applicable requirements of the Clean Water Act or any other applicable discharge requirements, including any permit requirements.

7. Be responsible for the operation, maintenance and repair of all STATE roadways, box culverts, superstructures, substructures, wingwalls and other transportation-related appurtenances that are constructed within STATE rights-of-way.

The DISTRICT will:

1. Define and provide to both the STATE and the CITY, the design criteria and standards that would be required for the DISTRICT to assume operations and maintenance of the flood control-related improvements between 43rd Avenue and the Agua Fria Freeway south frontage road.

2. Review and approve the final plans and specifications for the channel improvements to be designed by the STATE and the CITY.

- a. Within 15 working days of receipt of plans and specifications, submit its comments to the STATE and the CITY.

- b. Within 15 working days of receipt of final plans and specifications, submit its approval to the STATE and the CITY or notify the STATE and the CITY of their concerns.

3. Inspect completed construction of STATE improvements in order to ensure construction is in accordance with agreed upon plan. Within thirty (30) days of the inspection date, the DISTRICT will provide written notice to the STATE of the need for any necessary modifications to the STATE improvements. The DISTRICT will not assume operation and maintenance of the STATE improvements prior to the completion of any necessary modifications by the STATE.

4. Monitor construction of the DISTRICT/CITY project and inspect and approve the completed DISTRICT/CITY project to ensure construction is in accordance with the agreed upon plan. Within thirty (30) days of the inspection date, the DISTRICT will provide written notice to the CITY of the need for any necessary modifications to the DISTRICT/CITY project. The DISTRICT will not assume operation and maintenance of the DISTRICT/CITY project prior to the completion of any necessary modifications by the CITY.

5. Review and approve the CITY's rights-of-way acquisition and access plans and costs for the DISTRICT/CITY project.

6. Participate, as necessary, in public involvement activities organized and conducted by the CITY.

7. Bear a portion of the total cost, estimated to be \$1,700,000, for future design, construction, utility relocation, and rights-of-way acquisition associated with the DISTRICT/CITY project. The DISTRICT's total contribution

towards these costs shall not exceed \$1,200,000. exclusive of any additional environment mitigation measures, without the written approval of the DISTRICT.

a. Reimburse the CITY within thirty (30) days of receipt of invoice for actual costs, up to \$400,000, associated with future design and rights-of-way acquisition incurred after the effective date of this agreement.

b. No earlier than July 1, 1992, and subsequent to the expenditure of the CITY's \$500,000 contribution, reimburse the CITY within thirty (30) days of receipt of an invoice for any additional actual costs associated with future design and rights of way acquisition.

c. No earlier than July 1, 1992, furnish \$400,000 of its portion of the estimated construction cost to the CITY within thirty (30) days of receipt of notification from the CITY that the process has been initiated for advertising the DISTRICT/CITY project for construction bids.

d. Provide its remaining share of the approved construction bid amount within thirty (30) days of receipt of notice from the CITY that construction of the project is twenty-five percent (25%) complete. Any remainder of the DISTRICT's estimated \$1,200,000 share of the costs for future design, construction, utility relocation, and rights-of-way acquisition shall be made available for change orders approved by the DISTRICT and shall be reimbursed, as necessary, to the CITY within thirty (30) days of receipt of invoice.

8. Fund fifty percent (50%) of any additional costs for environmental mitigation measures, not to exceed a combined total of \$200,000.

9. Assume operation and maintenance of the flood control-related features of the DISTRICT/CITY project and the STATE improvements south of the Agua Fria Freeway south frontage road that are constructed in accordance with the agreed upon plan, upon receipt of perpetual easements from the STATE and the CITY for drainage and for use of STATE and CITY rights-of-way for the DISTRICT's operation and maintenance purposes.

10. At its own cost, operate and maintain the DISTRICT/CITY project east of 43rd Avenue as well as the STATE improvements south of the Agua Fria Freeway south frontage road after the improvements have been constructed and accepted by the DISTRICT as having been constructed in accordance with the agreed upon plan by the DISTRICT, and after necessary easements for maintenance purposes have been transferred to the DISTRICT.

a. Not be responsible for operation and maintenance of aesthetic features, recreational features or non flood control-related landscaping associated with the STATE or DISTRICT/CITY improvements.

b. Reserve the right to review and approve the design and construction of any future changes to the STATE and DISTRICT/CITY improvements.

11. Reserve the right to review and approve any upstream or lateral drainage or flood control projects to be constructed by the STATE or the CITY that will flow into the improved Scatter Wash to ensure that the design capacity is not exceeded.

12. Take all required actions within its authority to ensure that waters discharged into the PROJECT from lands owned or regulated by the DISTRICT comply with any applicable requirements of the Clean Water Act or any other applicable discharge requirements, including any permit requirements.

13. Assist the CITY in the acquisition of all necessary permits by gathering data on vegetation, wildlife, water quality, and archaeological resources, as well as other data pertinent to the analysis of project alternatives.

The CITY will:

1. Serve as the lead agency for the permitting, design, and environmental mitigation, if necessary, on the DISTRICT/CITY project east of 43rd Avenue which will tie into the improvements to be constructed by the STATE. The project will be designed using standards and criteria provided by the DISTRICT.

2. Serve as the lead agency for the construction of the DISTRICT/CITY project that will tie into the STATE channel improvements. The City of Phoenix, Design and Construction Management Division, shall contract for the construction and shall provide construction management services for the DISTRICT/CITY project. Request and receive written approval from the DISTRICT for any change order requests for the construction, to be paid for by the DISTRICT, prior to approving the change order.

3. Acquire or otherwise control all rights-of-way necessary to construct the DISTRICT/CITY project that are not presently owned by the CITY or the STATE. Necessary rights-of-way owned by the CITY prior to execution of this agreement will be made available at no cost, for the

DISTRICT/CITY project. Upon completion of the project, grant easements to the DISTRICT at no cost, to operate and maintain and access the channel constructed on all CITY-owned or controlled property.

4. Serve as the lead agency for the relocation of all utilities necessary for construction of the DISTRICT/CITY project. Flood control-related utility relocations will be considered a project cost using DISTRICT utility relocation policies.

5. Serve as the lead agency and assume all costs for public involvement activities.

6. Construct, at its own cost, the 43rd Avenue/Scatter Wash culvert structure and channel improvements west of 43rd Avenue and be responsible for all utility relocation costs associated therewith.

7. Bear a portion of the total cost, estimated to be \$1,700,000, for future design, construction, utility relocation, and rights of way acquisition associated with the DISTRICT/CITY project. The CITY's total contribution towards these costs shall not exceed \$500,000, exclusive of any additional environmental mitigation measures, without the written approval of the CITY.

a. Invoice the DISTRICT for actual costs, up to \$400,000, associated with future design and rights of way acquisition incurred after the effective date of this agreement.

b. No earlier than July 1, 1992, and subsequent to the expenditure of the CITY's \$500,000 contribution, invoice the DISTRICT for its share any additional actual costs associated with future design and rights of way acquisition.

c. Upon initiation of the process of advertising for construction bids on the DISTRICT/CITY project, but no earlier than July 1, 1992, notify and invoice the DISTRICT for \$400,000 of its portion of the estimated construction cost.

d. Provide notice to the DISTRICT when construction of the project is twenty-five percent (25%) complete, and invoice the DISTRICT for the remaining approved construction costs to be paid by the DISTRICT. Any overpayments made by the DISTRICT as the result of cost-reducing change orders shall be reimbursed to the DISTRICT within thirty (30) days of completion of the construction contract.

8. Fund fifty percent (50%) of any additional costs for environmental mitigation measures, not to exceed a combined total of \$200,000.

9. Maintain any drainage pipes or structures that outfall into the improved Scatter Wash from CITY owned or controlled rights-of-way.

10. Not increase the future flows that discharge into the DISTRICT/CITY project beyond those amounts designed by the CITY without first obtaining the approval of the DISTRICT and the STATE.

11. Take all required actions within its authority to ensure that waters discharged into the PROJECT from lands owned or regulated by the CITY comply with any applicable requirements of the Clean Water Act or any other applicable discharge requirements, including any permit requirements.

12. Be responsible for the operation, maintenance and repair of all CITY roadways, box culverts, superstructures, substructures, wingwalls and other transportation-related appurtenances that are constructed within CITY rights-of-way. Also be responsible for the operation, maintenance and repair of all aesthetic features, recreational features, and non flood control-related landscaping.

13. Process and coordinate the Conditional Letter of Map Revision (CLOMR) and physical floodplain map revision through Arizona Department of Water Resources (ADWR) and Federal Emergency Management Agency (FEMA) for the DISTRICT/CITY project and the STATE constructed project.

### III. MISCELLANEOUS PROVISIONS

1. Each party to this agreement (indemnitor) shall, to the extent legally permissible by law, indemnify, defend and save harmless the others (indemnitees) including, agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever which arises out of indemnitor's acts or omissions pursuant to this agreement. Such indemnification obligation shall encompass any personal injury, death or property damages resulting from the indemnitor's acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigations, incurred by the indemnitees. Indemnitees shall be liable for their own negligence or wrongful acts as provided by law.



2. Each party to this agreement will pay for and not seek reimbursement for its own personnel and administrative costs associated with design, rights of way/easement acquisition, permitting, coordination, review, construction, inspection, management and administration of the DISTRICT/CITY project and the STATE construction project.

3. This agreement shall remain in force and effect as long as the Agua Fria Freeway is part of the State Highway System unless modified or terminated by written agreement of all the parties.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
Mail Drop 616E  
205 South 17 Avenue, Room 222E  
Phoenix, AZ 85007

Flood Control District  
of Maricopa County  
Chief, Planning Branch  
3335 West Durango  
Phoenix, AZ 85009

City of Phoenix  
Street Transportation Director  
125 E. Washington Street  
Phoenix, AZ 85004

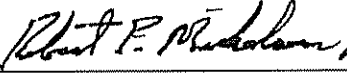
9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, a Municipal Corporation, Frank Fairbanks, City Manager

STATE OF ARIZONA  
Department of Transportation

By  11-1-91  
JAMES H. MATTESON, P.E. Date  
Street Transportation Director

By  11/22/91  
ROBERT P. MICKELSON, Date  
Deputy State Engineer

Attest:

By   
City Clerk

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
a Municipal Corporation

Recommended by:

By D. E. Sagramoso 10-9-91  
D. E. Sagramoso, P.E. Date

Approved and Accepted:

Attest:

By Jim Justice  
Chairman, Board of Directors

By Stan McCand 11-4-91  
Clerk of the Board Date

This Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

By [Signature] 10-11-91  
General Counsel Date

F.Y.E.A. REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS SHOWN
1	ARIZ.	RES-400-0-804	152	235	

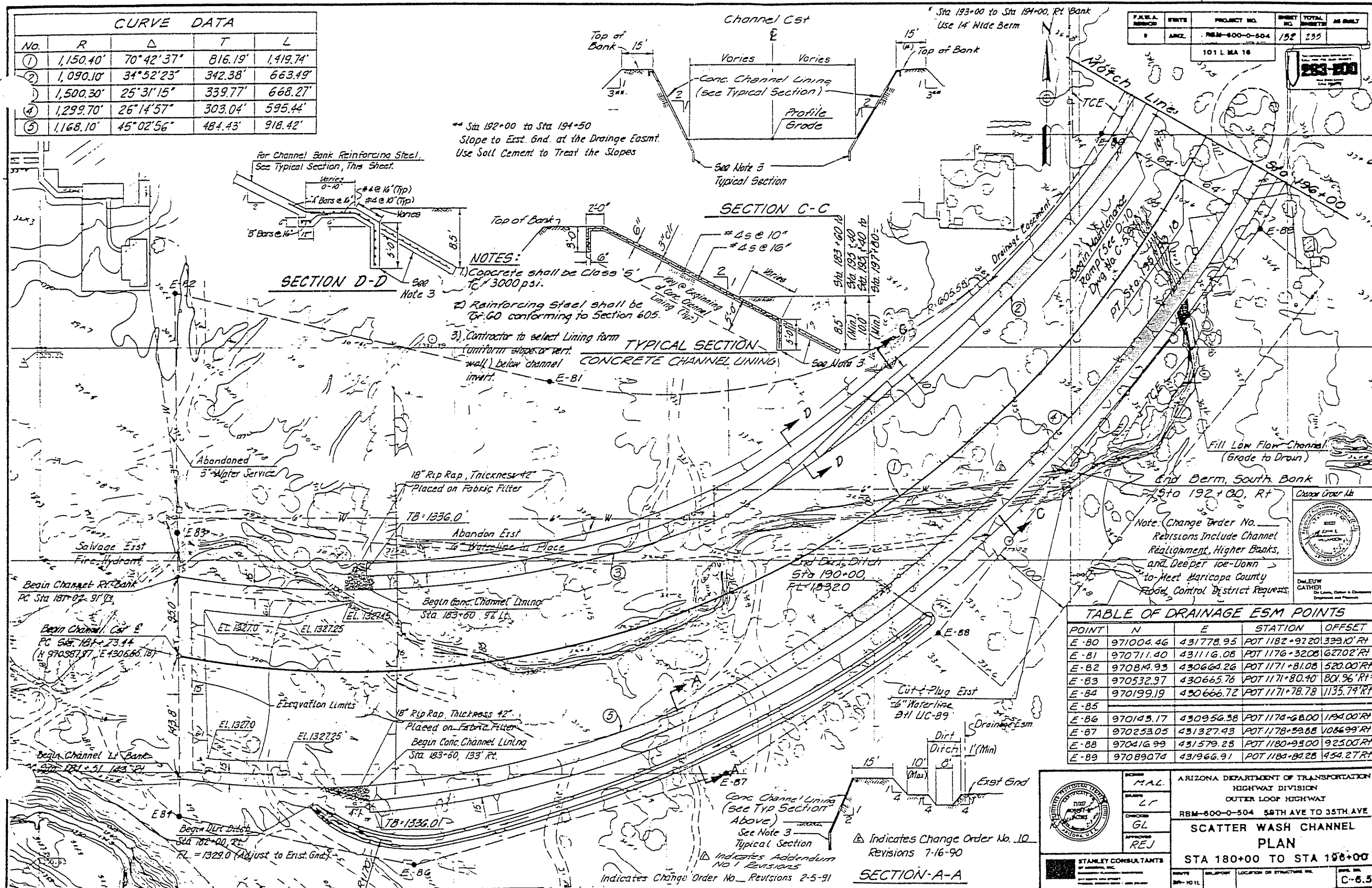


TABLE OF DRAINAGE ESM POINTS

POINT	N	E	STATION	OFFSET	Notes
E-40	971618.09	432122.01	POT 1186+45	271.87' LT	Med Cst & Sur E
E-41	97186234	432265.13	POT 1187+90	515.00' LT	Med Cst & Sur E
E-42	97162667	432426.96	POT 1189+50	276.09' LT	Med Cst & Sur E
E-43	971785.13	432625.76	POT 1191+50	435.00' LT	Med Cst & Sur E

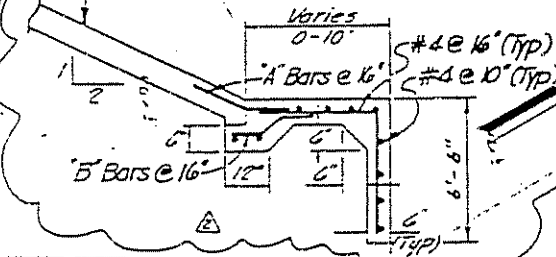
NOTE:  
Use of Shotcrete  
is Permitted for  
Construction of  
Transition Walls

CURVE DATA

No.	R	Δ	T	L
①	700.00	41°00'	261.72'	500.91'
②	450.00	57°00'	244.33'	447.68'
③	1000.00	25°00'	221.69'	436.33'

\*Place Filter Fabric Beneath Rip-Rap

For Channel Bank Reinforcing Steel,  
See Typical Section, Dwg No. C-6.5



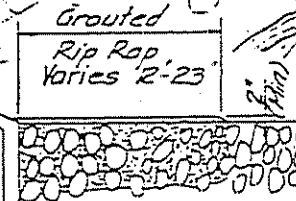
SECTION C-C

Channel Cst @ Sta 200+00  
Med Cst @ Sta 1186+20

Construct 9'-10' x 6' x 430' LF CBC,  
1'-10' x 8' x 430' LF CBC.  
SK 30' RT

\*Place Dumped Rock  
18" Rip Rap, Thickness = 54"

Cst Conc Channel Lining  
(See Typical Section  
Dwg No. C-6.5)

SECTION B-B  
(2" min cover of grout  
above Rip Rap)

See Dwg No. C-5.11  
For 96" SD

\*Place Dumped Rock  
18" Rip Rap, Thickness = 54"

See Dwg No. C-5.11  
Dwg No. C-5.11

Cst Conc Channel Lining  
(See Typical Section  
Dwg No. C-6.5)

Limit of Channel Fill

Grade to Drain

Grade to Drain

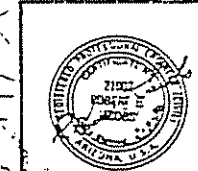
Channel  
Cst @ Sta

Varies  
(See Plan)

Varies  
(See Plan)

Profile  
Grade

Section A-A



DESIGN  
M.A.L.  
CHECKED  
GL  
APPROVED  
REJ

ARIZONA DEPARTMENT OF TRANSPORTATION  
HIGHWAY DIVISION  
OUTER LOOP HIGHWAY  
RBM-600-0-504 59TH AVE TO 35TH AVE

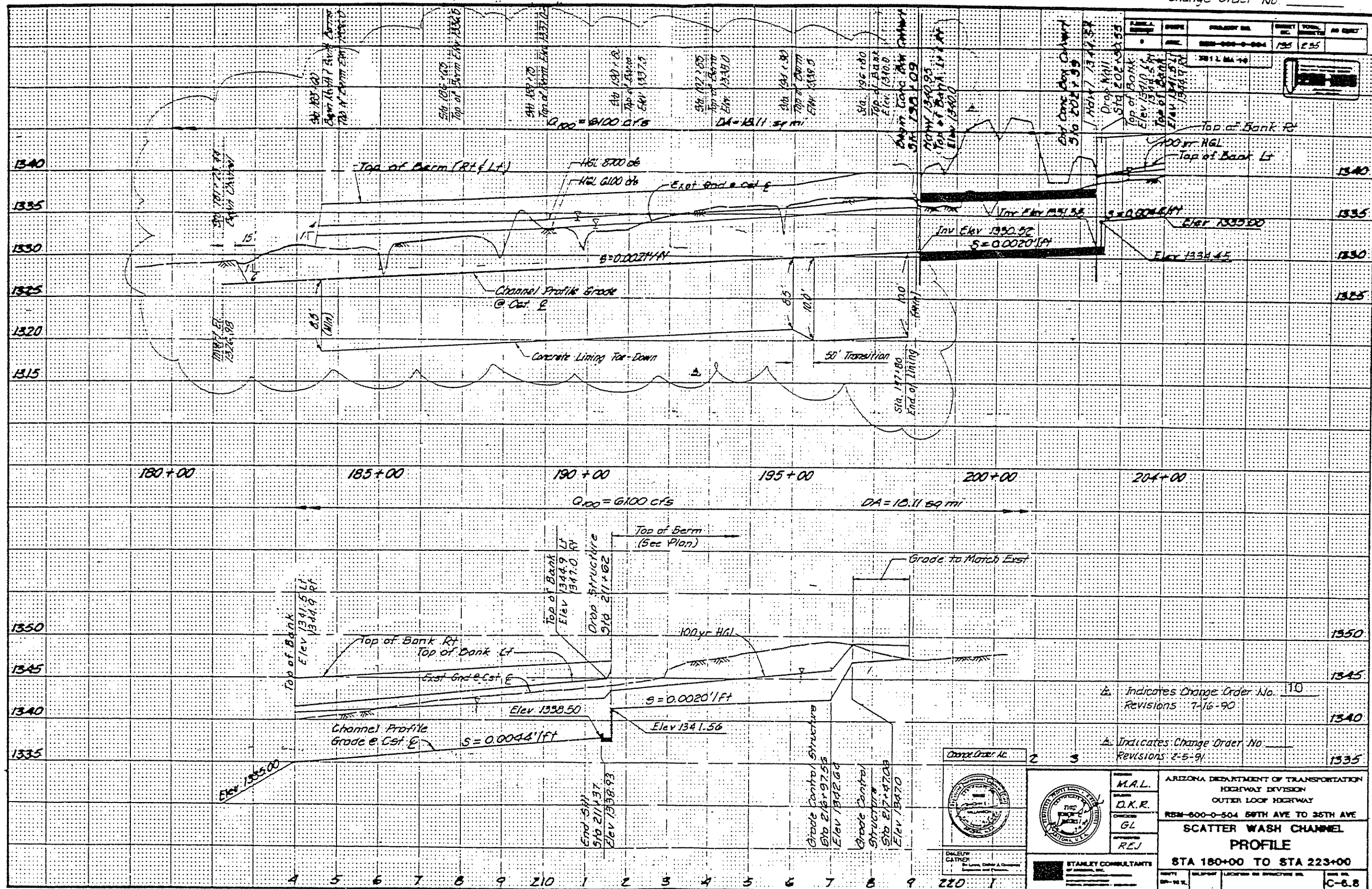
SCATTER WASH CHANNEL  
PLAN  
STA 196+00 TO STA 209+00

ROUTE  
SP-101L  
MILEPOST  
LOCATION OF STRUCTURE NO  
DWG. NO.  
C-6.6

Indicates Change Order No.  
Revisions 7-16-90

Indicates Addendum  
No. 1 Revision C-4-90

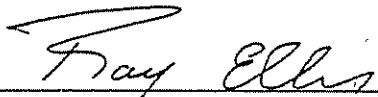




RESOLUTION

BE IT RESOLVED on this 1st day of February 1991, that I, JAMES S. CREEDON, as Acting Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with Flood Control District of Maricopa County (FCDMC) and the City of Phoenix (COP) for the purpose of modifying design of Scatter Wash to conform to FCDMC requirements, in exchange, FCDMC and COP will assume channel maintenance.

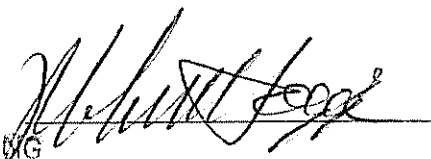
Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

  
s/ JAMES S. CREEDON, Acting Director  
Arizona Department of  
Transportation

APPROVAL OF THE PHOENIX CITY ATTORNEY

*I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY and the CITY OF PHOENIX, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona and the City Charter.*

DATED this 12th day of November, 1991.

ACTING  
City Attorney 





Attorney General  
1275 WEST WASHINGTON  
Phoenix, Arizona 85007  
~~XXXXXXXXXXXX~~  
GRANT WOODS

INTERGOVERNMENTAL AGREEMENT

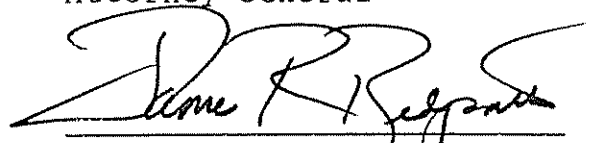
DETERMINATION

A. G. Contract No. KR91-0404TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 26<sup>th</sup> day of November, 1991.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section